GOVERNMENT OF INDIA
COMMERCE AND INDUSTRY
LOK SABHA

UNSTARRED QUESTION NO:2951
ANSWERED ON:22.03.2005
AMENDMENT TO PATENT ACT
Virendra Kumar Shri

Will the Minister of COMMERCE AND INDUSTRY be pleased to state:

(a) whether the TRIPS Agreement defines patent-able invention;

(b) if not, has the patentable invention been adequately defined in the amending process of the Patents Act, 1970 to avoid filling of questionable patents;

(c) reasons for not incorporating stipulations of Art. 31

(b) on compulsory licences for commercial activity in Amended Patents Act, 1970;

(d) reasons for modifying various sections of chapter V dealing with `opposition to grant of patent` when not `required as per TRIPS Agreement;

(e) whether provision has been made to limit the scope of subject-matter that can be patented as recommended by the commission in chapter 6 on patent reform in the report of UK commission on IPR;

(f) measures taken to tackle the voluminous patent applications;

(g) difference between `new use and mere new use` as sought to be changed in the Section 3, of the Patents (Amendment) Ordinance, 2004;

(h) details pertaining technical application to industry or a combination with hardware and its justification;

(i) justification with regard to Section 92

(a) in the Ordinance;

(j) measures to meet export orders in case relevant patented drug for domestic market is not being produced;

(k) provisions of Section 91

(a) will not restrict export only to pharmaceutical products; and

(l) is so, details thereon?

Answer

THE MINISTER OF STATE IN THE MINISTRY OF COMMERCE AND INDUSTRY (SHRI E.V.K.S. ELANGOVAN):

(a) and (b) TRIPs Agreement under Article 27.1 provides that patents shall be available for any inventions, whether products or processes, in all fields of technology provided that they are new, involve an ipventive step and are capable of industrial application. The Patents Act, 1970 under Section 3 contains details of inventions, which are not patentabie.

(c) The provisions relating to compulsory license under Chapter XVI of the Patents Act, 1970 were revised and restructured by the Joint Committee of Parliament that examined the Second Amendment to the Patent law. The provisions effectively balance and calibrate IP protection with public health, national security and public health concerns.

(d) The modified opposition procedure seeks to provide correctives against delays and introduces a simplified, efficient, cost effective and user-friendly mechanism which not only facilitates expeditious grant of patents but also safeguards the interest of third parties.

(e) The relevant recommendations relating to limiting the scope of subject matter that can be patented made in the report of UK Commission on IPR have been incorporated in the Patents Act.

(f) To tackle the problem of voluminous patent applications Government has taken up comprehensive modernization of patent offices.

The major components of modernization initiatives include review of existing procedure and development of new user-friendly procedures, computerizing the procedure for grant of intellectual property rights, networking of offices, activities connected with human resource development, training of officers, awareness and outreach activities. The problem of backlog of pending patent applications has also been addressed through legislative measures contained in the Patents (Amendment) Act, 2002 {brought into force with effect from May 20, 2003) which introduced examination on request system in ptace of examination of all applications. Additional patent examiners have also been recruited and trained for expeditious disposal of grant of patent applications within a time frame.

(g) and (h) The amendment to Section 3 seeks to provide drafting consistency by substituting the words `new use` by `mere new use` with a view to excluding grant of patent for mere new use of a know substance and also to clarify the provision so as to allow software related inventions having technical applications to industry or in combination with hardware as eligible for being patented.

(i) to (l) Section 92(A) has been inserted to implemented the decision contained in Para 6 of the Doha Declaration on TRIPS and Public Health for enabling export of pharmaceutical products to countries with insufficient or no manufacturing capacities in the pharmaceutical sector in making effective use of compulsory licensing to address public health problems.